

**STATE OF MAINE**

**DEPARTMENT OF MARINE RESOURCES**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>TIM LEVESQUE FOR A LIMITED-PURPOSE</b>	)	
<b>AQUACULTURE LEASE LOCATED IN EASTERN BAY,</b>	)	<b>FINDINGS OF FACT,</b>
<b>BAR HARBOR, HANCOCK COUNTY, MAINE</b>	)	<b>CONCLUSIONS OF LAW</b>
		<b>AND DECISION</b>

On June 15, 2000, Tim Levesque of Trenton, Maine, applied for a limited-purpose aquaculture lease totaling 1.86 acres of coastal waters of the State of Maine, located in Eastern Bay, Bar Harbor, Hancock County, Maine. The applicant requested the lease for a term of three years for the purpose of cultivating blue mussels (Mytilus edulis) using suspended culture techniques.

Approval of limited-purpose aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that the Commissioner of the Department of Marine Resources (DMR) may grant a lease if he determines that the project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

As provided for in 12 M.R.S.A. §6072-A(6), the Commissioner is not required to hold a public hearing on this application unless a hearing is requested in writing by five (5) or more interested parties. Notice of the application was published in the April 26, 2001 issue of the *Ellsworth American* newspaper. The Harbor Master for the Town of Bar Harbor and a resident of Lamoine provided written comments during the comment period established in 12 M.R.S.A. §6072-A(5). The record was reopened for the Harbor Master to elaborate on his comments. Written comments were received following the comment period from nine persons that included

three requests for a hearing. However, lacking five or more requests, no hearing was held on this application.

### **Evidence Concerning the Nature and Impact of the Proposed Lease**

12 M.R.S.A. §6072-A(8) and the Department's regulations, Chapter 2.64(2), require the applicant to provide an application for a limited-purpose (experimental) aquaculture lease. This proposed experimental lease is sought to conduct commercial research and development for growing blue mussels at the proposed site. The applicant requests the maximum lease term of three (3) years and 1.86 acres of coastal waters, having the approximate dimensions of 135' by 600'. The proposed lease is located approximately eight-tenths of a mile due east-northeast of Googins Ledge in Eastern Bay, Bar Harbor, Hancock County, Maine. The applicant requests authority to grow blue mussels using suspended culture techniques.

The operation would include the use of up to three 40 x 40 foot rafts made of three 3' x 40' wide pontoons connected together by five 40' lengths of galvanized steel I-beams. The steel I-beams would support eighty 3"x4" wooden cross beams. Thirty to thirty-five (30 - 35) foot length ½-inch diameter drop lines would be suspended from the wooden cross beams, with a maximum of 450-drop lines, hung from each raft. The three rafts would be connected in tandem with sections of 15 – 20 foot lengths of 1½" polysteel line or 1" chain. The outermost four corners of the rafts would be anchored to 3 - 4 ton granite mooring blocks using 40 feet of chain and 230' of 1½" polysteel line, for a 3:1 scope for the water depth. A 30' deep 4" - 6" mesh predator net would be suspended around the perimeter of each raft to deter diving ducks from eating the mussels. According to the application the rafts would be marked with radar reflectors and night lighting if required by the US Coast Guard.

Individual drop lines are composed of a biodegradable cotton mesh which would be mechanically wrapped around the ½" rope to hold the seed mussels in place. Six-inch plastic pegs would be inserted into the rope every foot to hold the mesh and mussels in place. The mussels would be attached to the lines at the approximate density of 120 - 400 per foot. Seed

blue mussels would be obtained from Maine sources, or collected from the same drop lines. Seeding would generally take place during the months of May or October with the grow-out of the mussels in approximately 12 months. Therefore the mussels would be mechanically harvested during roughly the same months each year. During harvest the mussels would be washed, separated and graded. A 40 x 40 foot raft would take approximately 5 days to harvest and therefore three rafts would take about 15 days to harvest annually. According to the application it would take 2 years to determine whether the site would produce enough mussels to reapply for another lease term before the end of the third year of the proposed lease term.

The application describes the bottom composition to be soft sandy mud with a gentle slope for the topography. No flora or fauna was reported as determined by dragging the site and obtaining one scallop shell. The area is subtidal, with a depth range of 80' – 91' at low and high tides. Currents are described to have a maximum of approximately 25cm per second with an average of 9.2cm per second. The primary direction of flow was due east and west for the respective ebb and flood tides.

The application indicated that the proposed lease site has very limited lobster fishing and scallop dragging activity due to the soft mud bottom. The proposed lease site is located 2,460' from the shoreline on south side of Eastern Bay and 3,270' from the north shore.

According to a letter provided by the Division II Marine Patrol Lieutenant, there is lobster fishing and boating activity in the general area.

According to the Department's Aquaculture Environmental Coordinator's (AEC) report the 135' x 600' proposed lease dimensions described in the application would have a corrected acreage of 1.87 acres based on verification of the corner coordinates on site using survey quality differentially corrected Global Positioning System (dGPS) technology. During a site visit on August 14, 2001 approximately 300-500 lobster buoys were observed along the Lamoine shore (northerly) and approximately 300' north of the proposed lease boundaries. Approximately 75 buoys were observed off the Salsbury Cove shore at least 1,800' from the proposed site, due south. No buoys were observed within the proposed boundaries. No recreational fishing or

activity was reported. There is an existing limited-purpose mussel lease due northeast approximately 610' and a pending limited-purpose mussel lease due northeast about 1,570'.

The AEC estimated the following approximate distances between the nearest corner of the proposed lease to: the ledges off the Lamoine shore as 2,900'; to the landing dock facility located due west at Lamoine State Park as 7,774'; to the intertidal area off the Salsbury Cove shore as 2,372'; to Googins ledge as 4,235'; and to the navigation marker Red Nun #14 marking the navigation channel south side of Googins ledge as 5,201'. The primary navigation channel through Eastern Bay is located south of the proposed site and Googins Ledge passing through the deeper waters in Eastern Bay south of Googins Ledge. In the AEC's opinion, if the proposed lease were granted, night lighting should be required and the nearby proximity to an existing lease would pose a single area for navigators to pass instead of being spread apart at multiple locations throughout Eastern Bay. The nearest mooring of eight moorings observed would be 2,000' distant from the proposed lease and no interference would be anticipated.

The AEC reported that access by the applicant would be gained via the Lamoine Public Boat Ramp or the Trenton public boat ramp located off the Bar Harbor airport; there would be little biological interference given the substantial depths and currents in the area; and that the Department's Water Quality Program classifies the area as open to the harvest of shellfish.

The Harbor Master for the Town of Bar Harbor wrote that, in the Town's Harbor Committee opinion, the location of the proposed lease would be a navigational hazard in an established vessel traffic area. The Harbor Master offered to provide further information if needed and the record was reopened for this purpose. However, upon request to elaborate on this opinion, no response was received from the Harbor Master during or subsequent to an additional 14-day comment period provided for a response.

A landowner in Lamoine wrote in objection to the proposed lease. In his opinion, other limited-purpose leases should not be granted in addition to the existing lease in Eastern Bay; it would negatively impact the "viewshed" from his property and its resale value; it would negatively

impact the aesthetic use for camping and recreating at Lamoine State Park; and would be a hazard to navigation.

The comments received after the close of the comment period were opposed to the proposed lease for the same reasons as the landowner as described in the previous paragraph, plus similar concerns that included: the proposed lease would cause crowding at the State Park and its mooring field; the proposal is too large for Eastern Bay; night lights should not be allowed; the area should only be used for recreational purposes as it is not a commercial fishing area; such applications should not be allowed to be submitted by non-local residents and local fishermen should have priority rights over water usage in this area; there is not enough value in the proposal to warrant the activity; and, it would interfere with lobster traps.

### **Findings of Fact**

The proposed lease site is located in water depths ranging from 80' to 91' at low and high tides and is approximately eight-tenths of a mile due east-northeast of Googins Ledge in Eastern Bay, Lamoine. The proposed lease is located approximately 2,900' distant from the nearest intertidal shore on Lamoine side due north and 2,372' from the intertidal shore off Salsbury Cove due south. According to the AEC's report, the nearest mooring is located at least 2,000' from the proposed lease. Based on the evidence that there is ample room for riparians to access their shoreline and that the applicant did not request or require access to the proposed lease from riparian property, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

According to the AEC's report the main navigation channel passes south of Googins Ledge as indicated by deeper waters oriented east to west and located south of the proposed lease site that continue due south of Googins Ledge in Eastern Bay. A Coast Guard navigation buoy is positioned off the south side of Googins Ledge approximately 5,201' distant. The proposed lease site is in water depths that range from 80' to 91' at low and high tides and is located approximately eight-tenths (4,235') of a mile due east-northeast of Googins Ledge. The proposed lease is approximately 2,900' distant from the nearest intertidal shore on the Lamoine

side due north and 2,372' from the intertidal shore off Salsbury Cove due south. Navigation by lobster fishers, as indicated by buoy placement, takes place along the shorelines up to a distance of approximately 300' north of the proposed lease, likely following a 60' depth contour and an apparent drop off. No trap buoys were observed within the proposed lease boundaries, as confirmed in a site visit to the area by the AEC on August 14, 2001. In the AEC's opinion, if the lease is granted navigation lights at night should be required. Although the Bar Harbor, Harbor Committee and Harbor Master's opinion was that the proposed lease would represent a hazard to navigation, no specifics were provided upon request to explain their considerations of the proposed lease and its location. Taking into account that there is at least 2,300' of navigable water providing adequate room to navigate between the proposed lease and the nearest shoreline due south that includes the main navigation channel, and the AEC's recommendation that night lights should be required if the lease is granted, I find that the lease will not unreasonably interfere with navigation in the area given the condition that a copy of the Army Corps of Engineers permit for lease approval of the lease location/placement within navigable waters and a copy of approval for the requirement, if any, for night lighting by the U.S. Coast Guard be provided to the Department prior to start up and copied to the Harbor Master in the Town of Bar Harbor.

According to the application lobster and recreational fishing would be allowed within the open areas of the proposed site. The application indicates that the primary activity in the vicinity is lobster fishing, which is concentrated along the shores up to 300' north of the proposed site and appears to follow a 60' depth contour according to the maps and distance scales in the evidence. The local Marine Patrol Lieutenant reported there is boating activity and lobster fishing in the general area. According to the AEC no recreational fishing or activities were observed. No lobster trap buoys were observed within the proposed lease boundaries, which were confirmed in a site visit to the area by the AEC on August 14, 2001. According to AEC's report there is a limited-purpose mussel lease due northeast approximately 610' and a pending limited-purpose mussel lease beyond that lease due northeast about 1,570'. The waters of the area are

classified as open for the harvest of shellfish according to the Department's Water Quality Program. Based on the evidence that there is limited commercial or recreational fishing activities within the proposed lease boundaries and immediate area, and given the AEC's opinion the proposed lease would not interfere with the existing aquaculture lease in the area, I find that the lease will not unreasonably interfere with fishing, aquaculture leases, or other uses of the area.

Blue mussels would be obtained from local waters on collecting ropes suspended from the proposed rafts or from other Maine sources. The proposed activities include only the collecting and rearing of blue mussels on drop lines suspended from rafts. Bottom planting of wild seed blue mussels is not requested. No information in the record indicated that the proposed activities would cause any interference with the local flora or fauna. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

The application indicated that blue mussel seed would be obtained from Maine sources or from the proposed lease. Based on this evidence, I find that there is an available source of blue mussels.

According to the AEC's report the applicant would access the proposed lease from the Trenton public boat ramp or from the Lamoine State Park landing located approximately 1.66 miles (7,774') due west of the site. The nearest shore is well in excess of 1,000' from the proposed lease boundaries according to the maps and charts in the evidence. The nearest state park and beach is Lamoine Beach and State Park located due west and northwest at least 2,900' from the proposed lease. This was confirmed in a site visit to the area by the AEC on August 14, 2001. In light of the number of set up, seeding and harvest days as described in the record, there would not be an unreasonable interference with the public use or enjoyment to public fatalities by the applicant's use of those facilities to access the site at those times. Access to the site by the applicant at other times, such as for site inspection or cleaning, would be by small vessels comparable to others using the public facilities for recreation. Accordingly, I

find that the proposed lease activities will not unreasonably interfere with public use or enjoyment of a public facilities within 1,000', and that the lease site is not located within 1,000' of any municipally or federally owned beaches, parks, or docking facilities.

### **Conclusions of Law**

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation given the condition that a copy of the Army Corps of Engineers permit for lease approval of the lease location/placement within navigable waters and a copy of approval for the requirement, if any, for night lighting by the U.S. Coast Guard be provided to the Department prior to start up and copied to the Harbor Master in the Town of Bar Harbor;
3. The aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of blue mussels; and
6. The aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A.

§6072-A.

### **Decision**

Based on the foregoing, the Commissioner grants the requested limited-purpose-commercial lease of one 1.87 acres to the applicant for a period of three (3) years from the date of this decision for the purposes of cultivating blue mussels using three tandem 40 x 40 foot rafts in a system for suspended cultivation techniques. The applicant shall pay the State of Maine rent in the amount of \$50 per acre per year. The applicant shall post a bond or establish an escrow account in the amount of \$5,000, conditioned upon its performance of the obligations contained



in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

### **Conditions to be Imposed on Lease**

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

1. navigation, recreational fishing, lobster and crab fishing, are allowed on the open areas of the lease;
2. the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations, Chapter 2.80; and
3. a copy of the Army Corps of Engineers permit for lease approval of the lease location/placement within navigable waters and a copy of approval for the requirement, if any, for night lighting by the U.S. Coast Guard must be provided to the Department prior to start up and copied to the Harbor Master in the Town of Bar Harbor.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

**Dated:** \_\_\_\_\_

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**George D. Lapointe (Commissioner)**  
**Department of Marine Resources**